

REGION III

SOUTH ATLANTIC STATES

REGULATORY FAIRNESS BOARD HEARING

BALTIMORE, MARYLAND

JUNE 22, 2000

GAIL McDONALD: Good morning. Welcome to the Region III Regulatory Fairness Hearing. I'm Gail McDonald, I'm the National Ombudsman at SBA. SBA has this important national program where we provide a forum for small business people to exert their important rights to regulatory fairness. Every year we have ten hearings around the country, one in each of SBA's enforcement districts and this is the South Atlantic States, there are six states in our region and this year we're grateful to be here in Baltimore.

I want to thank the Regional Administrator, Kerry Kirkland, and the District Administrator. But I want Kerry to say a few words because this is a joint effort with SBA, as I say. Although our program covers concerns that small business people have about all government agencies, the Congress and the President, when they established this program in 1996, believed it should be put in SBA because SBA has the biggest small business constituency and the most contact with small business owners around the country. And so it's important, first of all, that we get the word out to small business people that they have rights to regulatory fairness, that they need to work in partnership with their government to comply with regulations that cover their businesses. That's an important message and we all need to be about that.

And then we carry through on the promise by having the hearings, the forums and then the other opportunities that small business people have to register their concerns or their compliments about their experiences with Federal agencies in the regulation process.

As I say, our goal is that we will have a culture in this government of a partnership between small business and the agency that regulates them. A partnership to comply, to bring about a healthier, cleaner environment and to follow the rules that are important in our country. But at the same time, not to over-

penalize small businesses who have so many responsibilities and so many varied calls on their attention and on their resources.

So we're grateful that you all came today. We have a good number of testifiers, we welcome others to come up and give us your experiences if you would like to. And as I say, during the year you can reach us at any time by fax or phone. We have an 800 line you can call and get an appraisal form, you can download this form from your computer from SBA's website, we're the RegFair button, and you can contact our office, of course, regularly by phone, the National Ombudsman is in Washington and you can reach us at any time with your concerns.

I think the genius of this program is that we have a network. Today you will be hearing from two agencies that are part of that network, where in every agency we have a contact, someone above the regulatory system. So if something happens to you that is unfair or should not have happened, we can take it to that person and they will help you get a fairer hearing in that agency. Anything that is going on, time lags, internal regulations that may be promulgated without notice to you, that kind of thing can be fixed and we believe these independent people within the agencies that work with us are very good at doing that. So we believe that people who come to us do get the attention they deserve and we're very proud of that network in the program. And as I say, today you'll be hearing from two of the agencies that have extensive programs and they like to hear comments back from you on those.

At this time let me recognize the Regional Administrator, Kerry Kirkland, for a few words.

KERRY KIRKLAND: Thank you, Gail. Good morning. On behalf of our visionary Administrator, Aida Alvarez, I just want to welcome you to this very, very important hearing. I also want to welcome Gail

McDonald to our region. I think this is the first time she's been in our region since she's been appointed as the National Ombudsman. Joe Sobota, I want to acknowledge him with the Office of Advocacy, he and Jerry Glover are probably one of the best friends that small business have, not just in this region, but clearly throughout the country. On many, many occasions I've been on the forum with Joe's boss, Jerry, and I've not seen a more tenacious fighter on behalf of small businesses in this country.

Allan Stephenson is probably one of the best District Directors in the country right here out of our Baltimore District Office. I had the distinct pleasure of working with Shawn and Victor in Pittsburgh, we had a very, very successful RegFair hearing there not long ago. And, clearly, I wanted to acknowledge the District Office staff who are really responsible for doing the grunt work in helping to make this RegFair hearing possible.

Clearly, I think I would be remiss if I didn't thank all the businesses and the organizations for coming out because this is what it's all about, listening to you today. Everyone knows the story of the economy right now, everyone knows that 98 percent of all the 22 million jobs that was created over the last seven years were created by small business and that is so significant. One million new business start-ups a year. I'm suggesting that because the climate and the environment would suggest that we're living in what we are considering a boom economy. The lowest unemployment in 29 years, the lowest minority unemployment ever. And I think that is to be said. But when we look at those kinds of statistics and we try to analyze those statistics, I want to share with you what they mean to me.

I will never forget and I'm sure there's many people in this room, I'll never forget one of the football teams I played for and the baseball teams I played for. The basketball teams I played for and

I can clearly remember all the Girl Scout outings and all the other kinds of programs that small business sponsored when I was a kid and they're still sponsoring today. I can't go anywhere in this region and not take a look at some type of a community initiative that small business has sponsored. It matters, it counts, it's beyond just for the sake of business. Yes, everybody is in business to make a dime. Everybody is in business to be successful and to do well, but the real story about the success of small business and one of the most significant stories regarding that success is taking a look at what those small businesses are contributing to those communities and their neighborhoods. It's a story that should be told a lot more vigorously than it's been told in this country today.

And because of that necessary interaction with community, it's important that agencies, particularly like the SBA, engage in some kind of initiative to deal with regulations that stifle small business growth and development. Because when we stifle your growth and development, I will submit to you that we're going to stifle the ability to contribute to community and neighborhood to try to increase the quality of life for people in this country.

Clearly what we're attempting to do here is to listen to issues as it relates to taxes, environment, health, safety, and agricultural issues that would create barriers or obstacles to your business growth and development. This is your forum, we're here to listen to you today. This hearing and the purpose behind this, I'm sure will be articulated to you a lot better than what I could at this point. Clearly, what they're going to do with this information is take it back to sort of do a blocking, if you will, for small businesses. This will make sure that all the obstacles that stand in your way are taken down or dealt with so that you can engage in the kinds of business that you need to engage in. In order to be successful and, clearly, the kinds of business that you have give

back to your neighborhoods and your communities.

I'm going to thank you and I'm going to welcome you and if you need anything during your stay here, please don't hesitate to contact myself or one of the SBA staff people. Thank you.

GAIL McDONALD: Thank you, Kerry. Every region has small business owners who are also community leaders who are active in this program and who advise us. Today, we have two Board members from this Region and they will conduct the hearing. They will be asking questions of the witnesses so I want to turn it over to our Chairman, Dr. Victor Tucci from Pennsylvania. Vic.

VICTOR TUCCI: Thank you and I would like to welcome everyone to the fourth SBREFA hearing that we've had for Region III. We've been in Philadelphia; Richmond, Virginia; Pittsburgh; and Baltimore. It is a pleasure to be here at the home of Art Model's Ravens. I'm from Pittsburgh, Pennsylvania, we're sort of in the middle of the Baltimore football triangle, we're west of Baltimore, we're a little bit southeast of Cleveland and we're a little bit northeast of Indianapolis.

My company, I am a small business owner, my company's name is Three Rivers Health & Safety. We're located in Pittsburgh but we work nationally. We help companies comply with OSHA and EPA regulations and we help companies to lower Workers Comp costs. I'm also, as well as being on this Board and a former White House delegate to the White House Conference on Small Business, I'm also on the Board of National Small Business United, SMC locally in Pittsburgh and the President's Council of NAM. I also serve on the local emergency planning committee for Allegheny County and through that I have been involved with helping to prevent terrorism in the United States with weapons of mass destruction. One of the things that my company is now doing is working with hospitals to prepare them to comply with the hospital governing

boards regulations to be prepared for terrorism in case of an event.

Our other Board member who is a former Chair is from another town in Pennsylvania, the other city in Pennsylvania, Philadelphia.

SHAWN MARCELL: Thank you, Victor, thank you, Gail, thank you, Kerry. Thank you, everyone for coming. My name is Shawn Marcell, I'm one of the Region III Fairness Board members. I've been involved with the program since it began. I've been on the Board since 1997. I am an entrepreneur, I started a couple of companies. One software company, another Internet company and I also teach entrepreneurship at the University of Pennsylvania Wharton School. I have been involved with the program because I'm a friend of small business. All the businesses ultimately start small and I went through a lot of the bumps and grinds that small business owners go through in my own experiences and so I wanted to be able to be a friend to other small businesses, help other small businesses if I could and impart some of my experience for their benefit. So that's why I'm here. I'm really glad to see all of you here today and I am looking forward to a successful hearing. Thank you.

VICTOR TUCCI: First of all, I'd like you to know that your comments today will be part of a report that will go to Congress and even though we are not able to solve everyone's individual problems, what we do try and do is find areas where regulatory agencies are not being as friendly to small business as they should be and try to reverse those trends. Although from my experience at each of the other meetings in Philadelphia, Richmond and Pittsburgh, many times small business owners have an opportunity to meet with high ranking officials from the government agencies that they are having problems with and they are able to resolve the problems. We've had quite a few problems

resolved out of the hearings.

One of the things that I've found through my life is communication is the key and many times when we're dealing with the lower level, either regulators or people within business, a lot of people tend to be very structured and very inflexible. But as we move up and we talk to the supervisors or people with authority, that many times our problems can get resolved and this is an opportunity that you have here today even though we can't guarantee that all problems will be solved, your problems will be heard.

So with that in mind, I would like to introduce our first small business person, Ann Howard, from the American Federation of Home Care Providers out of Silver Spring, Maryland.

ANN HOWARD: Thank you for the opportunity to be here today on behalf of my members who are all small businesses and other home care providers with whom I work who don't happen to be my members. I am the Vice President of the American Federation of Home Care Providers, we represent home health agencies and durable medical equipment companies and some hospices that participate in the Medicare and Medicaid programs.

Our members deal on a daily basis with the people who run the Medicare and Medicaid programs. We call them HCFA, that stands for the Health Care Financing Administration. They're headquartered right up here on Security Boulevard and Baltimore. They are part of the Department of Health and Human Services.

My members tell me to a person that they would much rather deal with the IRS than with the HCFA. Every day I get numerous calls and I would say that 50 percent of those calls have to do with people who are having very serious problems related to their dealings with the Medicare program. It's important to understand that HCFA oversees the program but the program is actually

administered by contractors and these contractors are called fiscal intermediaries and carriers. The fiscal intermediaries reimburse providers like hospitals and home health agencies, those are called Part A providers. And then you've got the Part B providers and those would be groups like physicians and durable medical equipment companies.

I have never gotten a call that I would call complaining about the behavior of the IRS vis-a-vis any of my members. I have never gotten a complaint about OSHA. But I get complaints day after day after day about the handling of the Medicare program. I know that there are a number of really wonderful people at HCFA that are trying to make the program work right. We have the pleasure of working with them. But there are some basic flaws, some things that are missing in the system that allow the contractors basically to be unaccountable.

The contractors, for whatever reasons, are able to operate without any consequences when their behavior has the effect of putting providers out of business on no grounds whatsoever and we see this happen over and over and there actually is a provider I just met today who is here who is going to talk about how this happened to her.

Two years ago I testified at the Regional Fairness hearing in Richmond. I actually remember you from there, and I believe there were about seven or eight home health providers who testified that day. We were there mainly to talk about the problems generated by the Balanced Budget Act of 1997. Specifically, with the new reimbursement system that was put into place. It was called the Interim Payment System. One of the big problems with the Interim Payment System was that the rates were applied retroactively and, in some cases, nine to twelve months retroactively. It was designed by HCFA to be as punitive as possible and we believe to

drive as many small businesses home health providers out of business as possible. And they had options or other ways they could have designed it, but they designed it in a particular way to have the maximum impact on destabilizing small businesses. Nobody has been a more valiant supporter of home care in this battle than Jerry Glover who wrote terrific letters to HCFA and to Congress about what was happening to us.

The other big issue we had was surety bonds. Surety bonds were designed in such a way, they also came out of the Balanced Budget Act of 1997 that probably no more than 5 percent of my members were able to get surety bonds. My members are primarily women-owned businesses, immigrant-owned businesses, and minority-owned small businesses. 95 percent could not get bonds. But thanks to the good work of the SBA and Senator Kit Bond, in particular, HCFA was forced to withdraw their surety bond regulations and, thanks to that, there are many people still in business who would otherwise be out. We're not off the hook on surety bonds yet though because HCFA is going to issue a new rule, probably by the end of the year, and we have some concerns about that. But that's not what I'm here to talk about today.

We said two years ago that the Interim Payment System was going to have a devastating impact on the home health benefit and we were right. The home health benefit has been cut by 45 percent as a result of the Balanced Budget Act of 1997. I was at a meeting at OMB about two weeks ago. I mentioned that to one of the OMB higher-ups and I said are you aware of the impact that home health has been cut by 45 percent. He said no, we didn't know that, we just thought we reduced the rate of growth of home care. They said they were cutting \$16.7 billion over a five-year period from the home health benefit. Now, HCFA's own statistics indicate that they cut \$79 billion. So they have destabilized the home health industry, they have almost cut it in half, and that half, that

loss, is to the beneficiaries, the sickest beneficiaries cannot get services at this point in many cases.

Approximately 3,000 home health agencies were forced out of business as a result of the Interim Payment System and related provisions of the Balanced Budget Act. But I dare say the 7,500 or 8,000 who were not put out of business by the BBA are at risk every day in every way of being put out of business by the unaccountable contractors of the Health Care Financing Administration.

I just want to go over with you, five cases, and these aren't long, just to illustrate the problem that small business providers are having with the Health Care Financing Administration's contractors. I'm going to talk about a provider in Pennsylvania. This provider is an excellent, highest quality provider. The fiscal intermediaries make denials in error to these home health agencies and all the ones I know.

They calculate the denial rate for the providers, the provider appeals and gets all of her denials overturned, but the intermediaries will not correct the denial rate.

In a September 3, 1999 letter from the intermediary, which to this Pennsylvania provider and the intermediary is Wellmark, the intermediary says this. This is a quote. "It has never been our practice to take the reverse denials out of the calculation of denial rates." Well, you might say, so what? Well, here is the difference it makes. It keeps this provider on something called focus medical review which is harassment every day in every way through paperwork. It can cause a provider to lose something called periodic interim payment if it goes beyond a certain denial threshold. Without periodic interim payment, which is a regular check every two weeks, they may not be able to stay in business. It singles the provider out as a so-called problem provider. If

the provider is a problem provider, then they get socked with all kinds of audits, not just from the contractors of HCFA, from the Inspector General, it could lead to the FBI coming in.

This provider has proof that she was right all along because she has almost 100 percent favorable decisions from an Administrative Law Judge and these ALJ's are part of the Department of Health and Human Services, they are independent of the Health Care Financing Administration, and we want to keep them that way. But it doesn't matter that this provider gets all her denials overturned. The intermediary is telling her to correct her problem. Correct your problem, they say. Complete a corrective action plan, this is a quote: "We will continue to review these types of claims to ensure your corrective action plan is working. If you fail to decrease your number of denials for these services, your facility may be referred to our anti-fraud unit." Very bad. "This action could result in possible civil action or additional monies due to the Medicare program." This provider gets all of her disallowances overturned.

Here is another provider, a member of mine in Ohio. It's a medical equipment company and an oxygen therapy company. This is a case where the provider is being penalized for the mistakes of the carrier. The carrier denied \$94,000 upon reviewing 100 claims in an on-site review. They projected this 100 claims to the universe of the payments made to this home care medical equipment and oxygen therapy provider and told the agency that they owed \$322,572 back to the Medicare program. They sent a letter to this provider dated March 28th. They told the provider in this letter that she had until April 12th to request installment payments based on hardship to her agency and that she had until April 26th to pay back the whole \$322,000. If it's going to be a hardship, she had until April 12th to get that letter in. She received this letter on April 14th, two days after the deadline. She was told

by the contractor, so sorry, it's too late, nothing we can do about it. Well, the provider said what on earth is going on, why didn't I get the letter? And the carrier said well, we use an outside firm to handle our mail. And we want all the money back and they stopped payment to this home health agency, 150 employees, several hundred patients, stopped all payment to her on May 6th. Well, of course, she's trying everything she can to get her money owed to her paid back again. This is just five pages, a time line of who she called at the carrier and who she called to try and get the money loose. Five pages, it covers just one week. This is the runaround she got from her contractor, it's called Administar, they're headquartered in Indianapolis. We have no information for you, we can't help you, call somebody else, no, you can't speak to my supervisor, my name is Craig, but I won't give you my last name.

The key phone number that she finally got that she was supposed to talk to, either rang without answering, had a busy signal all day or finally, a message saying we're at lunch. She never got through to them. They told her on May 12th that they did not get her financial hardship letter though they had acknowledged in writing on April 28th that they had indeed received it. She, in desperation, went to the Louisville office, she's located in Ohio, because she was told these are the people who handle financial hardship cases. Got to Louisville, they told her we don't handle this here, go to Indianapolis. So she went to Indianapolis and they agreed to meet with her and they told her there was nothing they could do. They told her to get in line and wait for her appeal.

So there she is. So what did she get all of her denials, \$322,000 worth of denials on? Well, for the most part, it came down to two types of situations. The first type is what I call wrong box denials. The claim against this provider was that the physician

did not date something called the certificate of medical necessity and these have to be completed by the physician in order to provide durable medical equipment services to a patient. The physician has to sign it and the physician has to date it. So they said in two cases that together added up to about \$18,000 by the time they were projected to the universe, that Dr. John Gilbert had not put a date on the CMS and, therefore, they were denying the claims. The provider doesn't get paid! Well, here is his name and here is the date, October 13, 1995. The problem is he didn't put it in this little box here so it's a wrong box denial. The same doctor put the date here, didn't put it in the little box. Wrong box denial.

Well, the other problem is what I call wrong form denials. This agency has between \$100,000 and \$150,000 worth of denials when projected to the universe on the basis of the physician did not fill out a two-sided certificate of medical necessity form. On one side he puts all the information about the patient, on the other side there's just some directions telling him how to do it. The provider made a switch from the one-sided form to the two-sided form back in 1997 when the carrier told him to do that. Now, the carrier is saying, well, gee, we think that we have required a two-sided form since 1988 when, in fact, on the CMN form, down at the bottom, the OMB date is May 1997. And, besides, even if this agency filled out the wrong form, a one-sided rather than a two-sided form, or the physician did, why is the home health agency left holding the bag? So that's another case the agency is in great danger of going out of business, they're trying to work with the carrier, they're trying to work with their Congressional offices.

Here's a case of a wonderful home health agency that I know very well, had four small businesses in Tennessee. By the way, my members are in this area and they're all across the country. She

was driven out of business by HCFA. They harassed her to death, eventually they stopped her reimbursement. The main issue was denials. In the period 1994 to 1998, when she went out of business, her agencies, she had four, got 6,692 denials of services to home health patients, nursing services, aide services. She appealed everyone of them. 6,389 of these denials have already been reversed by ALJ's. 220 are still in the appeals process. Some of those cases date back to 1996, by the way. 83 denials had been upheld, however, there is something called waiver of liability, when it comes down to the end, out of the 6,995 denials, only seven or eight will not be paid to this agency. And in many cases what you have were the same patients getting denial, the agency appeals on behalf of the patient to get it overturned, and the same patient, the same types of services gets denied over and over and over and over again. I have seen the documents from this agency, it is an absolute abuse. Now, it's this provider who has been called abusive by the HCFA. They called her and they said she was abusing the appeals process when, in fact, if this agency had not stood up for these beneficiaries, they would have lost all of their home health services. So it wasn't a home health agency who was abusive, it was the home health agency and the beneficiaries who were being abused by their own government.

I'm just going to do two more very quickly. One of my members, a wonderful home health agency in California was an immigrant-owned, female-owned home health agency. HCFA contracts with the State Health Departments to do surveys to make sure that the home health agencies meet all the Medicare and Medicaid conditions for participation. According to HCFA's own regulations they are required to establish rapport, discuss your observations, maintain communication, maintain open dialogue, give the provider opportunity to present additional information, have the home health agency help you find something or interpret information for

you, and give them reasonable time to provide additional documentation. What this provider got was hostile treatment, no communication, no consideration of her documentation. The State surveyors were denying documentation was there when, in fact, it was right in front of their nose. They told her she didn't meet the conditions of participation when, I believe clearly, she did. They sat her down, and said you can appeal but when you're out of business and you have no additional income, it's very difficult to hire lawyers and the consultants you need to bring an appeal and so she's gone.

I'm going to use one other and then I'll turn it over to Phyllis Fredland. This is the American Health Care Services, they're located in Florida, home health agency. They had a case based on this so-called statistically valid random sampling that HCFA has its intermediaries do. They were asked to pay back \$1,248,747 as part of the HCFA audit based on 100 claims, 100 claims projected to their universe. But an Administrative Law Judge said the following: The provider owed nothing. The Inspector General working with HCFA used faulty sampling methodology to come to this \$1,200,000 overpayment assessment. They lost documentation, meaning the Inspector General, lost documentation and couldn't show how they arrived at this figure. Everything that the OIG did in the process was a violation of the provider's due process rights and the ALJ said the Inspector General's behavior was arbitrary, capricious and egregious. And that's your typical post-payment sampling treatment of a provider and that's the kind of treatment that providers get on a daily basis, they have no rights is what it comes down to. They have no rights that the intermediaries and carriers are bound to respect. Until some change is made in the law, we believe there is a need for health care providers to have a health care providers Bill of Rights that ensures their due process rights, entitles them to information

ahead of time so that policies are not applied retroactively. I took this one right out of the Taxpayer Bill of Rights, gives them the right to sue when they are maliciously and egregiously harmed by the conduct of any of HCFA's contractors.

We also need health care providers to be able to participate in the evaluation of HCFA's contractors. We believe that that's absolutely essential, we think that HCFA probably does not know the full scope of what is going on. And, finally, we believe that the contractors need to be given incentive to get it right in the first place. The way you can do that, it would take a change of law probably, is to penalize them when they make egregious errors. Penalize them by making them pay compensation and lawyer's fees and consulting fees to providers who are unjustifiably harmed. And make them pay not out of Medicare funds but make them pay out of their own private profits.

GAIL McDONALD: Ms. Howard, will you take questions?

ANN HOWARD: Absolutely.

GAIL McDONALD: Good.

AUDIENCE MEMBER: I just came in and there's a white van in the parking lot and the lights are on.

VICTOR TUCCI: Thank you. HCFA has been, as you said, we got to meet in Richmond and this has been a constant in the four hearings. Is HCFA represented here today? I do notice that we do have some other agencies represented here and, as I said, communication with these people is essential. Would anyone representing any of the government agencies other than SBA like to stand up and say what agency you're with.

AUDIENCE MEMBER: OSHA. AUDIENCE MEMBER: I'm a Regional Administrator with the OSHA in Philadelphia Regional Office. We

cover Baltimore.

AUDIENCE MEMBER: I'm Dave Miller, I'm with OSHA in the Baltimore area.

VICTOR TUCCI: I would like to thank all of you for coming and giving small business entrepreneurs an opportunity to meet with you afterwards to resolve any issues that they have. Your presence at these hearings is very important and I'd like to thank you. Art, you've been here for all of them.

With that, I would like to introduce Phyllis Fredland. I see that Phyllis is with Health Personnel, Inc. and Phyllis is from McKees Rocks, Pennsylvania or, as we call it in the Burg, from the Rocks.

PHYLLIS FREDLAND: First of all, let me say that I'm one of the providers that Ann represents, Ann Howard, the lady who spoke before. And she has already said some things about my agency but I'd like to go on and explain some more. Health Personnel is a small, woman-owned home health agency providing care to the greater Pittsburgh area for the last 15 years. We've stayed small on purpose. The agency has always believed we service the more complex than average Medicare patient with quality care and recently through the OASIS which is a program on assessment that HCFA published and through their way of using, what I would say, a national grading of the patients. What it is is a system that tells you how complex your patient is.

An average patient has a 1.0 average. Our average is anywhere between 1.25 and 1.9 average complexity on their scale, it's not our scale, it's their scale. That scale was called an HHRG and I know you all don't have it, it's just a scale for grading these patients. On our latest internal evaluations, 6 percent of our patients were stable with our intervention, 93 percent of our patients improved with our intervention and .7 percent declined

with our intervention. We're very proud of that because what that means is we've gotten people better.

In the past we've won over 98 percent of our claims through the ALJ process, our denied visits. The ALJ's are the Administrative Law Judges. They do not have to be lawyers but they do have to know the law and they are Social Security employees. They go by the regulations in the HM-11, this is a book that HCFA publishes to regulate us. They make these decisions based on those regulations although the intermediary says they don't. The intermediary is an insurance company contracted by HCFA to process claims. Some of them are Blue Cross agencies. So far we have dealt with three Blue Cross agencies as intermediaries, switching because one Blue Cross agency decides they no longer want to administer to the program. No matter who they are or what they are, they all seem to be the same.

According to the law all providers are supposed to meet the standards set up by the HM-11 and that's that manual that regulates us and all intermediaries are to use the regulations to evaluate whether the visits are appropriate. However, they don't. They tell you outright they go by the guidelines. Guidelines are a book that they publish for their own people, they won't even give it to us. That's pretty bad.

We've had ALJ's, Administrative Law Judges, tell us that they don't feel the intermediaries use the regulations to make denials and deny arbitrarily. We have no profit in home health at the present time so our ways of fighting HCFA are limited to what we can do as an agency. In 1990, there was a way that we could hire lawyers to fight but, now, there is no way. We're barely making ends meet literally. So we can't hire a lawyer and spend over \$50,000 of taxpayer money to fight them and win. For more than seven years, they did not deny my cases arbitrarily. Now, they

are again.

This is outrageous, it's your taxpayer money. Since the intermediaries left the system over the years, we've had multiple intermediaries. And we're dealing with our third one as I just stated before and as my accounting husband who is the CFO of Health Personnel says. He's dealt with the IRS many times. He'd much rather deal with the IRS under the old system before the legislation than deal with HCFA. That's how difficult it is to deal with HCFA.

In 1998, the intermediary accused us in writing of possible inappropriate use of the Medicare benefit and I've enclosed that letter in the folder I gave you all. They were unable to find any inappropriate use of the Medicare benefit. As it actually turned out, and we have no recourse, they can come in and do this any time. We had a disgruntled employee who we had fired for insubordination and she accused us with no proof. And, now, I'm told they're continuing to look at the agency. I was told this by a regional office, once you are looked at by them, they continue forever. In other words, they violate your rights every day of the year.

I can document out of control intermediaries. I have found definite irregularities at the intermediary level. Right now, I've been able to document that review and medical review is reviewing claims for appropriateness and reconsideration, which looks at claims that the provider asked to be reviewed because they were denied, and there are supposed to be two separate departments, that are not separate, as required by law and regulation. The first time, and I've put it in there, there is a letter where a woman who is second in command in the Review Department, signed off as second in command in the reconsideration department. That was two years ago and I called them on it. In

May, they sent out a newswire bulletin from the intermediary and that newswire bulletin published as head of Review a lady named Jane Teal and she was head of Reconsideration. To me, that says they aren't separate. And you know what? Both times we were told that it was a mistake. The first time we were told that it was an old letter, that the woman in there had been, and I can name names if you want, had been in Reconsideration before, now she was in Review. Okay, one time I can accept. The next time they told me it was a publishing error. That's a bunch of phooey as far as I'm concerned! I cannot get a fair shake if Reconsideration and Review are not separate. I absolutely cannot.

Our agency was told recently by a reliable source at the HFCA regional office that we have to deal with that the intermediary is paid for reviewing claims whether they are denied or paid. However, we were also led to believe by the same source that if a denial is reversed at the ALJ level, they get another fee for reviewing. That's double-dipping and, as far as I'm concerned, it should be illegal. If this is true, the incentive for the intermediary is to deny and this could be one reason why there are so many inappropriate denials.

This could also explain why the reversal rate of my agency at the ALJ is so high and would also mean that the intermediary was again being deceptive when they told us that the ALJ uses different regulations than those they use. I believe that it means that we have this incentive to deny, to not provide care for people and these are elderly people mainly who need the care, who have no recourse.

I, like Ann, believe there should be a monetary penalty for the intermediary when they inappropriately deny and I believe that money should come from non-Medicare funds and should not just be a reimbursement but should be an overpayment. I'm tired of this.

I also suggest that the reviewers have to be trained, have a training program outside of the intermediary. And that if they can't pass, they don't review. I've had reviews, and I put both cases in there, very recently, where I've been placed on focused medical review which means my records are being reviewed very closely for two very inappropriate denials. Both those denials were so bad that they got called by the ALJ and by the doctor. One of them was a case that the HM-11, a regulation book, used as an example. How did they deny an example that's used in the HM-11! The other one was so obvious that the woman had bleeding problems, it was unbelievable. Well documented, et cetera. Neither patient was my patient although I do see patients. I would say that you have nurses who do not know how to read a chart. That's why I say they need a training program.

I also think they need to have knowledge, nursing knowledge. I was told when they came in to do an audit where I was accused of inappropriate use of the Medicare benefit, that the reviewers who came had not home health experience, but had eight years of nursing experience together. No home health experience!

I believe that reviewers need to be able to connect signs and symptoms with the appropriate disease process. It's also interesting to note that no matter how much my cases go to the ALJ, never once has one been appealed by the intermediary even though there is a process, a mechanism for them to appeal it. Never once has there been a justification by the intermediary in the chart for the denial because they can't justify it.

In the past there have been ALJ's who are lawyers who said the denial coverage for skilled observation in a retrospective manner is an error in law. That ALJ also noted that in the HM-11, it states, "The determination of whether services are reasonable and necessary should be made in consideration that a physician has

determined that the services ordered are reasonable and necessary. The services must, therefore, be viewed from a perspective of the condition of the patient when the services were ordered and what was at the time reasonably expected to be appropriate treatment for that illness or injury throughout the certification period." They aren't doing that, not at all.

When a denial rate is greater than 10 percent, supposedly an agency is to put on focused medical review. I've been put on it for less than 10 percent. That, as far as I'm concerned, is illegal. Unfortunately, I can't get HCFA's regional office to take me off focused medical review even when the denials are inappropriate, even when the rate is less than 10 percent. They won't take me off. To do chart reviews for five ADR's is approximately eight hours worth of work so it's one whole day at work. But I don't have that whole day because I've got my staff to a bare minimum. So what ends up happening? I take it home with me to do eight hours worth of work at home and if you think that's fun, you've got another thing coming.

The intermediaries are all insurance companies and all they care about, it seems like, is their bottom line and their investors, not obeying the law and being responsible for their actions. We are told that each intermediary has a contract office of HCFA on site. This is who is responsible for seeing that the law is properly administered and that HCFA knows what is being done. However, it appears that the regional office and HCFA are not aware of what goes on at the intermediary. I was recently told that by a regional office person.

Therefore, a question arises to whom at the contract office do they answer to. I've attached the supporting information to this, to my statement, any of you who are interested, you may take the bulletin. I've given you my statement in greater detail in the pamphlets that I've put together over here, the folders I put

together over here. If you have any questions, please feel free to contact me at my office, the number is 412-331-1042. This situation is outrageous and I will tell you, if I didn't care about my patients, I would have gotten out of this business a long time ago and I will tell you that there are people who have gotten out just because they can't stand to deal with HCFA.

I have documented every single thing I've said here. I've given you the documentation, I don't know what else to do.

GAIL McDONALD: Thank you.

VICTOR TUCCI: Thank you. Our next entrepreneur is also going to be talking about HCFA and that is Marie Noplock from Sparc, Inc./Maryland Therapy Network.

As you're using Governmentese, I know that sometimes in your own business you're used to Governmentese terms. If we could try to translate that into English ease, it would be helpful.

MARIE NOPLOCK: I will try to remember that and I do thank you for the opportunity to at least hear some of the issues that we, as medical providers in the health care community, have had. It's been a very frustrating life in this community. Especially in the past couple of years as the Balanced Budget Act has gone into effect, we've just had such dramatic change which does not only impact us, as providers, but will also impact all of you and is impacting all of you. We all have elderly parents, we all will be elderly some day, if we do not care about this issue, who is going to care? I can tell you that the health care community is doing their best but many of us are worn out, worn down, and some of us, like myself, are out of business.

What I want to do is just tell you a little bit about my background and where I came from and what happened. Basically I'm

a speech and language pathologist. I've been a speech therapist for the past 30 years, I love the profession. I was doing a lot of work for ten years as a private practitioner in Hartford County, Maryland, which is northeast of Baltimore County. It was a rural community at the time and I got involved with nursing homes. I was doing some work in the hospitals and some work in the local nursing home community.

About ten years ago a lot of the nursing homes were asking providers to be able to bill as contractors to the Medicare program. And so my facility said could you please do this, we can't do it, we're not able to function this way. Basically, I went about trying to see what was involved with applying to Medicare to be a provider and they told me speech pathologists cannot be providers to the Medicare programs. About the regulations we can allow occupational therapists and physical therapists to do it, but speech pathologists weren't allowed. So if I wanted to do this, I basically had to establish an agency and develop both the other services, develop the volume in order to be cost reimbursed and have enough volume to support the cost. So I ended up getting involved with physical and occupational therapy. I started the agency ten years ago, we ended up just evolving into the largest area agency in our community because it was very difficult to get therapists. So we ended up doing work in most of the nursing homes in that agency and in Cecil County which is a little further north.

After, I guess, about six or seven years, I became involved with the National Association of Rehab Agencies, a very complicated program. I mean I just really thank Ann Howard and Phyllis Fredland for their wonderful discussion on what is involved. I mean they're talking from the home care perspective, I can speak from the nursing home perspective and providing these critical services.

We also developed an outpatient clinic which did a lot of geriatric rehabilitation for people with strokes that needed to go to an outpatient site as opposed to the nursing home. We did some acute services, we established very strong programs in these facilities to be able to take patients who were being forced out of hospitals very early, we had to intensively rehabilitate them and then get them on to homes. So we were at a point where we were doing almost the entire continuum, provided some home care under Part B. These were people who didn't need nursing services and then we would see them in our outpatient clinic. So we had a continuum of care. This is not a large agency, I can't boast of the huge numbers, but it was a very important agency for this small community.

What happened was I started hearing at my National Association meetings about many of my colleagues being audited and I kept saying what was going on. They were telling me about these unbelievable tactics of your auditors from your intermediaries that were going on. I kept saying well, you know, is some of this true and what should I be prepared for? Well, sure enough, I got a letter back in early '95 saying that we were going to audit your Medicare cost report for 1994 services. So we were notified, we tried to gear up. I have to tell you I have had the strongest support in terms of my consultants that I could find. I had a national-based accounting firm that specialized in health care that prepared my cost reports. I was not worried, I had the best. We used to go and these guys would present these audit programs to our National Association meetings.

I also had legal consultants who were the best. My attorney was out of Atlanta, was nationally known, knows the regulations. I had him check all of my stuff. I'm a speech pathologist. Yes, I'm a business owner, I'm an entrepreneur at heart, I love it, but I can tell you I'm smart enough to know when you're in a highly

regulated program like this Medicare program, you better have good consultants because you cannot know and you cannot deal with all the nitpicking kinds of things that were involved.

Well, I can tell you even with these consultants, HCFA and their intermediaries don't really care what you do or what you say because, as Ann and Phyllis have testified, you're wrong regardless of whether you're right or wrong. And it was the most unbelievable experience any small business person can be put through. And I can tell you, I've carried this around for a couple of years, I'm active in the business association, but I'm just glad to be able to tell my story at this point because at this point I'm in the appeal process, there is no appeal in HCFA. They will come in, they will make their judgments and, basically, you have to wait for six years to do the appeal process. You're out of business, you cannot appeal. They come in, no matter what you have done, you are out of business.

Just think about yourself being in a small business, I had five little people in my office who, God bless them, are wonderful, they're very organized, we keep excellent records. I had an accountant that was local who did my tax work. I had an in-house bookkeeper. I had a specialized Medicare accountant. We had tons of documentation to give these guys. As they came in, we gave them everything. The more we gave them, the more they asked for. They came back four times and made almost 100 adjustments for this little provider. What really upsets me is to think that the amount of money that they spent putting one little guy out of business and the taxpayer's money, my business, my people's jobs, the community services. Who is making these people accountable for this kind of work? It's just incredible, I couldn't believe it!

Some of the things that happened included them coming into the

office, we challenged them on a lot, the more that we challenged them on, the more they came back and more aggressive and harsh they were. Third and fourth field visit. I mean think about living with a team, all of you who pay taxes. A team of IRS agents for two years. How would that feel like, having them come into your home and tearing apart all of your records. You're trying to run a business and you are sitting there day after day dealing with these people. I mean would this be something you'd like to live through? I mean the stress is incredible.

We had an exit conference which was scheduled on May 28th which is when they all come together and they all sit down and decide, you know, what was right and wrong. We challenged them, we presented position papers. I had my accountants and my attorneys do these very lengthy papers which cost a lot of money to support the positions that we took. It didn't matter. We asked them if we could please come in and have a court reporter because we were worried about some of the things they were going to do in the exit conference. They said we couldn't have a court reporter. I went to my Congressman and my Senator. I said, you know, my attorney said she is just absolutely justified in at least documenting this information at a conference. We finally got it. We had to go through HCFA who finally got to the intermediary and said you have to allow this thing to be documented. So I had this much paper just documenting what happened and some of the things they pulled at that conference were unbelievable too.

At the very end, they pulled another adjustment of \$165,000 out of the woodwork with this survey that was not statistically valid. But they wanted to make sure that even if they ever turned the other hundred little nitpicking things that they would kill me on this one. And basically what it would have done, we ended up going to the National Association. If they had made this adjustment to us, the thing that could be applied, it would have

knocked out of half of the rehab providers in the country just by doing this statistical sample and providing this kind of a survey. Now, that's pretty incredible! When you think about the kind of leeway that these people have. As a private citizen, you know, I could not believe that this was my country and that this was happening.

So, basically, they said, well, these are the adjustments, you'll have to go to appeal. I'm still waiting, it's been three years, I haven't gotten to appeal yet. Where am I going to find money to do this because, like I said, I'm out of business, I'm not doing geriatric services, I have another company, I'm doing work with poor children now in the community. I'm billing the State which is a lot better than the Feds, I can tell you. And I feel very badly because like Ann and Phyllis said, we love this work, it's important work. I had quality staff, I had people who aren't in that profession anymore that have trained for years and have Master's degrees. This is not what health care should be about in this country. This kind of stuff has got to stop. Small business does not deserve to be treated like this, we've got to do something to change what's going on. And I can validate everything that these ladies said. I went through nurses coming in and doing reviews and telling my speech therapists and PT's that this wasn't medically necessary. We'd go through the process of getting the denials overturned. You're waiting a year to get your money! I mean you realize what this does to cash flow. I mean everybody knows what cash flow does to a small business. We had to wait to fill 80 percent to the Federal government, then you go to the State for the other 20 percent or to a private insurer. Well, you get denied and you're waiting almost a year for this stuff to happen. I mean it was incredible, the amount of time and effort, all of this is costly to you as taxpayers, it's costly to the Medicare program. I would like to have had a dollar

calculation in terms of the cost that it took in those two years, the amount of paper and documentation and professional time, to do these audits to take me out of business. Why? This is happening to so many providers from around the country. They changed the laws on there and now they want the nursing homes to provide these services. You're not getting the kind of rehab you used to get all in the name of health care reform and balancing the budget. Well, we balance the budget on the backs of very poor, frail elderly. We balance the budget on the poor small business community. So anything you can do, I didn't come prepared with a lot of information so I'm just glad I'm here and I thank you for your time.

VICTOR TUCCI: Thank you.

GAIL McDONALD: Thank you.

VICTOR TUCCI: Mr. Bachu, is your testimony related to HCFA?

MR. BACHU: No.

VICTOR TUCCI: Are there any questions on HCFA that we want to address now since we have everybody who is going to be testifying on HCFA, if there is any questions for those people now?

GAIL McDONALD: One thing I wanted to say was the largest number of complaints we've gotten as a program have been on this issue. So, you know, we not only are going to do public hearings but we are now going to do some issue Roundtables on this and plan to do one in July in New Jersey to get to the current status and bring all the people together, including HCFA. So we'll let you all know about that, we hope you'll come and participate in it. Then we plan to do one on the west coast in California where they've had significant problems as well. And we want to do this Roundtable jointly with advocacies who have been active in this as

well. So we are working on this. The Administrator of SBA has been involved as well and, you know, just as we saw some improvements in the bonding requirements, I think we can get some others. But this whole culture is, as you say, just an amazing travesty, I've seen nothing like it.

And on a personal note, my father had home health care when this was occurring and I know the daily disruption it brings into your home when these rules are changed in the middle of the game and so forth. To us, it was just horrifying. And we spent our time, talking to our Senator who we were fortunate enough to know. Trying to get help and trying to kind of sort out because we couldn't decide who was at fault. I mean we knew our provider and knew she was not at fault. But we just couldn't believe what was happening. So I saw it from your client's perspective as well. So we will continue to work with you on this issue. But there may be questions, it's such a complex area. Shawn, did you have anything?

SHAWN MARCELL: Just quickly. First, Phyllis and Marie, thank you for your stories. It's good to hear that. Ann, I wanted to ask you, you seem to be on the forefront of this. Can't the providers go to Federal court?

ANN HOWARD: You mean like to sue an intermediary?

SHAWN MARCELL: Yes, for an injunction or something.

ANN HOWARD: Well, they tried but, for the most part, I think intermediaries have solid immunity. One of my members actually has a lawsuit going against one of the intermediaries right now and they brought it in the State court on State charges and it got bumped from the State court over to the Federal court. But what they've done, which is a little more interesting, is that they sued the fiscal intermediary but they have also named three fiscal

different intermediary employees specifically and I think maybe that might help. But I'm not aware of any effective lawsuit that has ever been brought against any contractor for HCFA.

SHAWN MARCELL: Well, the issue of going out of business, you know, that's an irreparable harm and that's actionable and it seems like Federal court would be the place for people unless the law prohibits it.

ANN HOWARD: I believe that the law does prohibit it and if you look at it, we developed a health care provider Bill of Rights and I didn't bring a copy of it but I will get it.

GAIL McDONALD: You can fax it to me.

ANN HOWARD: What we did was use the model of the IRS Taxpayer Bill of Rights and the Taxpayer Bill of Rights, I guess, there's been two versions of it, one builds on the other. It says that the taxpayer can sue agents of the IRS for up to \$1 million in damages. We believe that we need a change in the law for health care providers to be able to do that, too, to be successful in court. And we believe that we need those rights and it should not cost the government anything. It just would arm and provide us with rights and they could protect themselves with these rights and they could see the private intermediaries when they act egregiously, rights including right to knowledge in advance, in writing of what the rules are. The right to know why they're being investigated under one of these, say, operating trust investigations, and the right to review their selection for an investigation, the right to due process before they're shut down like Marie was under a sampling, a take-back from the audit process or on conditions of a purchase patient survey unless they're endangering the life of patients.

SHAWN MARCELL: One other question, just the last question.

AUDIENCE MEMBER: Can you comment on the issue of do we have the right to sue the intermediary?

ANN HOWARD: No, absolutely not. I've tried it.

VICTOR TUCCI: How much did that cost you when you tried to?

ANN HOWARD: Greater than \$50,000 and I was told finally that I could not do it.

SHAWN MARCELL: One other question. What's happening now, I mean what is HCFA doing now, what have your conversations with them been?

ANN HOWARD: HCFA has people who want to make the program work. But the law is not on the side of providers and beneficiaries, by the way. These people were standing up for their beneficiaries when they brought all of these appeals. The law is stacked totally on the side of HCFA and HCFA's contractors. These providers basically have next to no rights that the intermediary is bound to honor. We're working with HCFA and there are some good people and they want the program to work well but we believe that there has to be certain changes, you know, including a provider Bill of Rights, they have got to allow us to participate in the evaluation of their contractors. The law needs to allow providers, like these two, to seek damages, monetary damages from the intermediary if they're wrong.

And the other thing, HCFA could do this, but if they don't, the law could do it, they should develop and mandate an alternate speed resolution process. They have this for nursing homes and we asked HCFA to do it for our health agency and they just put us off, they said no, we're not going to do it, it's different for nursing homes.

VICTOR TUCCI: Thank you. Has anyone arrived from HCFA who would

like to respond? Are there any intermediaries here who would like to respond. Joe Sobota, our regional advocate, do you want to update us on anything that's happening with advocacy on HCFA because I know that HCFA has been on the plate now for four years.

JOE SOBOTA: Vic, I don't have enough data. As I mentioned before, we've been deeply involved in this issue and Jerry Glover is the Chief Counsel for Advocacy most recently with some of the players. Again, as a matter of fact, I was recently with him in Pennsylvania when we met with the Pennsylvania Association and talked about the issue there again. Somebody mentioned, I can't remember who, that the home health care industry is a poster child for regulatory abuse! We have had our share of actions and interventions as best we could to help out. Certainly the surety bond issue is still open, I think we've had some effect there. Incidentally, some other regulatory grounds which we dealt with in the Department of the Interior and we went to Federal court in one of them. But I don't have anything new to report, I don't have any real news to report at this time but we're certainly aware of the problem. Indeed, the whole industry is affected and it's threatened and it's on the radar screen. I don't have to tell you how difficult it is to work with HCFA on some of these questions and we're trying hard. But it is on the radar screen and we'll do what we can.

VICTOR TUCCI: With that, we will continue to work with you. This has been an ongoing struggle. Mr. Bachu from Quasars, Inc.

MR. BACHU: Good morning. I'm sorry I'm late, I missed the panel, the introduction and everything. This is my first time attending this kind of session. I went to the brochure right here and it says there are ten Regional Regulatory Boards and each Board has five members who are small business owners themselves. I would like to be a member of one of these Boards. I don't know how to

do it, I'll be in touch with you.

GAIL McDONALD: Great.

MR. BACHU: My name is Krishna Bachu, it's a tongue twister for most of you. Our company is Quasars, Inc. Quasars stands for Quality Strategies. So I founded this company in 1995. My customers, my only two customers all these years, are the Federal Aviation Administration and NASA. I've been getting contracts and I applied for my 8-A status with SBA and I got it. It's two years since I got my 8-A certification, I don't have a single 8-A contract. I see there's a representative from the Department of Transportation is the only agent here who maybe has some relationship to FAA but I don't see anybody from NASA. Thank you.

I had only fifteen minutes preparation to come to this meeting. I don't have any idea of what to present to you. The testimony all those people have presented, how could I come with a beautiful testimony here. But next meeting, yes, I will be coming more prepared. I have a few things to present to you.

If you'll look at your e-mail, you know, most of the e-mails you receive from standard companies, this is one. I don't want to name the company. They say the fact remains that the 8-A contract is a not favorable because of the inadequate financial management of the DCAA, defective pricing and this kind of thing. But I tell you it's all bunk, it's not true. I'm sorry, I don't know how many 8-A companies are here. I'm only going to talk about 8-A companies. Woman-owned business, small business, I am only concerned with my concerns here, addressing 8-A companies.

The reasons they are not honoring 8-A company contracts is because we're an established company, we know all these things. It's because the changes in regulations. 8-A program is not the same as it used to be. First thing, why I am not getting an 8-A

contract? It's because the experienced 8-A companies are forming barriers to my entry. The Lockheed 8-A companies, five years back or seven years back, have a program that's been very strong. They've got contract agents for the last seven or eight years, they're very big. Now, they don't want any small 8-A companies to come in so they form an entry barrier. The program agency, says they have past performance, they have been supporting us for the last seven years. We want them back. We don't want a new company, we can't take a risk. And we say it's not fair. Send these back. It was brand new. Now it's past performance.

You see, these people are low maintenance. Our staff is getting reduced year by year. Now, there are more contractors so this contractor who has a ten-year history is very good, we want to give it back. You go and complain. He is saying the same thing. And how are they managing all these things? The Legal Department looks the other way. I give you one example. Let's say it is a small test. All it needs is some word processing using Microsoft Word. We will write it in such a way, we want Microsoft Modem skills. FX-18, FX-22, right? Spectrum Technologies and telecommunication. What relationship is there between word processing and Spectrum Technology? That's how each and every proposal is coming, the Legal Department is not looking at them. I complain and complain and complain. NIH is not here.

This is happening everywhere, I'm just giving a few examples. They ask in a solicitation for Lotus 1-2-3 for some input/output economic analysis model. We said we could do that. I went and talked to them. Oh, are you sure, is it still not Lotus 1-2-3, Version 1? No problem. The program manager gave the manual to give the model, I thought we could do the whole thing in ten days. Then I wrote my proposal. My branch office is on Third Street, I'm right in the building. Who am I going to complain to? They say there is a proposal due, you do it and they already awarded

some other contractors. Because they think this particular company, nobody else could do this work.

So I'm just giving two examples. There are so many with the F.A.A., I'll be coming back with all those examples.

VICTOR TUCCI: Thank you. Our next speaker is Kimberly Ann Shriver.

KIMBERLY SHRIVER: Good morning. I'm also kind of new at this. Let me tell you about what I do. I own a bridge painting contractor in the Baltimore City area. We do a lot of lead abatement on structural steel. I also do large commercial jobs in the Baltimore/Washington area. I've been in business three years. I've been in the business fourteen years, I used to run another company, Union Contractor in Baltimore.

First of all, let me tell you how difficult it is now to be a bridge painter in any state. You are obligated to become part of the QP-1 or QP-2 program which is a quality control program for any of these states because of the environmental issues and that cost is about \$20,000. It's \$5,000 to the State and the rest is with consultants and attorneys. So getting into the bridge business is a very complicated and hard thing to do if you haven't been in the business for ten years or 20 years. So that was my first hurdle that I overcame.

The second one is the certification process for the State of Maryland, the MBE program. It is probably the toughest program in the country to get certified in the State of Maryland. They really do scrutinize you and they investigate you and they make sure that, especially a woman in heavy highway work, is not a front for the white male.

And after I got over that obstacle and was largely investigated

for about six months, I now serve on the MBE Board for Ruth Hendricks for the State of Maryland.

Now, my third problem is the Federal Labor Board. As I said, I've been in business for three years. For the last two years I have been harassed by the local painting union like you would not believe. The first harassment came when 15 men piled in a bus and came to my office without myself being there, but my secretary, a woman there alone and harassed her. She said we were not accepting applications and they said if you let us fill out an application, we will leave your property. She was there alone. She let them fill out an application. I was out of town, she could not reach me. They left. Well, I, and I'm sure anyone in this room is not going to hire anyone who comes in harassing any employee. I did not hire any one of these 15 people.

Meantime, the Federal Labor Board sends me a notice of a charge that I discriminated because I would not hire any of these union employees. I'm going to say this frankly, like a dummy, I called the Federal Labor Board and said I have nothing to hide, you come in, you look at my paperwork, you investigate me, you do whatever you want. I cannot afford to hire an attorney, you come in and let's sit down and talk about this.

A local investigator came in, I opened my company wide open, I let him interview employees, I let him talk to the secretary, I let him do whatever he wanted. Little did I know, he had already picked his side. He was for the unions. We went through that for about a year, mass picketing, 52 men with a 16-foot long sign. My office is on Fourth Avenue and Federal Hill, it's a residential area. 52 men surrounding two women inside of a building. UPS couldn't come, UPS couldn't leave. Employees couldn't come, employees couldn't leave.

I called again the Federal Labor Board and said I have 52 men in

front of this building with a 16-foot long sign with, I guess, a photo of myself drawn on the banner with an arm around the person's neck. He said take a photo. I took a photo, many photos that day. I filed a charge, a complaint of mass picketing. Nothing happened. Again, we're charged with something else. I mean this has been going on for two years of my three-year old business. I thought when I went in business that I lived in a free country, I had the right to choose whether or not I wanted to be non-union as well as to be union. I personally, and my employees, who were union before, chose that they did not want to be union employees anymore. They did not want to be in the union. When my mentor went out of business and retired and I went into business a year before he left, most of those men came with me and dropped their union books. This was a choice on their behalf, this wasn't just mine, it was theirs.

Well, I hired a new attorney because the first attorney I had basically went golfing with the Federal Labor Board. They were buddies. Nothing got done, absolutely nothing got done. \$10,000 down the tube. I hired a new attorney who is probably the best around, he's resolved this issue in a month basically. He said can't go to settle, pay two of these employees back wages, they're willing to let you send notification to the rest of these men if they want to come work for you at whatever salary you're willing to offer them. He said it's going to cost you more to go to court than to settle. And at the time, being a struggling company and still trying to prove myself to the State of Maryland that we were capable of doing bridge work. As a woman-owned bridge company, there is no husband, there is no dad that gave me the business. I started out as a secretary in this business, I'm an estimator by trade.

Well, I did that. Six months later, I'm being sued once again. This time the Federal Labor Board is charging me for

discriminating again, they're still picketing. We had three guys that showed up on a commercial job in Washington, Civil Memorial Hospital. We were hired at the time, it doesn't matter if you're union or non-union. It doesn't matter, we were hired. I went up to my foreman and said we're here, big union shirts on, we're union proud. He said can I come to work and my foreman put him to work. I went down that day, introduced myself as the owner of TMN Painting, told them what we were willing to pay them, everything was fine. I left the jobsite. The next day all three of those employees were running caulk all over the wall, which was already painted, going around and harassing every other trade on why they weren't union. The unions were picketing me again, 15 men outside of this jobsite. They were going down the road on the bridge and picketing me, they were back at my office picketing me and then I had three union employees working for me.

So I went to the ringleader and I said, look, I don't care what you preach about before you get here or when you go to lunch or whatever, but please, when you're working, the other employees do not want to be harassed. It was becoming so difficult for my own men that they were ready to quit. And he said you're not going to tell me what I can say and what I can't say. So the words went back and forth and I said, please just go back to work. I left.

A week later, I went out, as I always do to check on the guys to see if they need anything, to talk to the project managers of the jobs. This guy, before I even walked in the room, said we need to talk, I want more money. I said do you spray? No. Do you steamblast? No. I said well, how can I pay you more than what my foreman makes? Well, we need to talk and your people stink and I'm going to run you out of business and that's what I'm here to do. I asked him three times to go back to work. Three times he's screaming at me, there were witnesses all around. I took his paintbrush out of his hand, put it in the bucket and I said you're

fired. It wasn't even eight hours later the Federal Labor Board had a charge in my fax machine, not even eight hours later. And on the charge it said I threatened and I harassed. I am 5'2", he's six-foot tall. Trust me when I tell you I couldn't threaten him if I wanted to. Every other man on that job I told to stay out of it. I let him scream and scream and scream until I couldn't take it anymore and I fired him and I fired him as I would fire anyone who talked to me in that manner.

My problem is there is no protection. I am one of only two women minority certified bridge painters in the country. There are only two of us. They are running me out of business and my Federal government isn't doing a damn thing about it, not anything about it. I've talked to politicians, they said well, next time you go to vote, vote Republican. That's not good enough, that's not good enough! Because I don't care who is in that office, I can have the same rights as that person out there with that sign. What really upset me is that the gentlemen that were working for me, the three gentlemen that were working for me, would leave at lunchtime and go out and carry a sign that said I was unfair. I was unfair! How in the world can you get a paycheck on a Friday and go out there and say this person is unfair.

Now, when the one gentleman was fired, the other two were working there, the one missed three days. I fired him. He called me up, he said I had problems, my daughter is sick, blah, blah, blah, can I come back to work? I said you know what, yes, you can, you can come back to work. He worked for about a week. As I was walking down the hall on the site, I heard all this hollering and my foreman came up to me and he says I can't work with him. He's not working to production, the other guys are complaining, he's messing things up, he needs to leave. I went over to him and I said you really need to go, we cannot take it anymore. If you're not willing to work, you have to leave the site. And he said I

was unfair, he cussed me out, my 13-year old daughter was with me that day because she works for me sometimes. It was horrible. Three days later he calls me and says Kim, I am so sorry, they used me, they put me in there, they used me, now they don't have work for me. I'm sorry I ever did that, can I come back to work for you? Would you bring him back, would you do it? Well, I brought him back. I brought him back because the Federal Labor Board consistently said to me that I'm unfair. When the investigator came to my office, the first thing he said was what does TNM Painting stand for, Tom and Mike? I said no, it stands for my two daughters, Telly and Makin. What does that have to do with anything? And it goes back to how can a female run a bridge painting business. He also said that the reason why the union was coming after me was because my former employer was a union company, he was on the Board with the unions and everything else and they assumed that it was his company and I was a front. After that was investigated, believe me, if the MBE Board for the State of Maryland investigate you, you're investigated.

So I have now other issues as far as I've called all the other larger painting contractors, I'm like the baby on the block. I'm the new kid even though I've been doing this for a very long time, the company is new, I'm 33 years old. I grew up inner city pigtown, the youngest of seven kids. I didn't start at money with this company, everything that I own is in this company and they know that. I called the larger painting contractors, never have they been harassed like this, never have they been harassed like this. And I believe it's because they know that I'm not over that hump and they know that I don't have the means to fight them and what is appalling is that the Federal Labor Board, when do they sit down? The same investigator that investigated me the first time is now investigating. When does he say, wait a minute, this is harassment, this isn't right? When does he say that? It's my

government too. They're not acting like my government, but it is my government too and I'm concerned now that I have a lot of other minority contractors, whether it be in bridges, commercial, industrial, calling me from different states and saying what do you do about this, what can I do about this? I haven't done anything about it. I will this time fight if I have to sell everything I have, this time I will fight. But there has to be something done, I want to know who's watching the Federal Labor Board. Who watches them?

VICTOR TUCCI: I think we have somebody here from the Federal Labor Board?

GAIL McDONALD: I think you're talking about the National Labor Board?

KIMBERLY SHRIVER: Yes.

VICTOR TUCCI: I was hoping that we had somebody here who might be able to help this entrepreneur. Do we have anyone here who oversees this?

GAIL McDONALD: We have a contact from the Board.

KIMBERLY SHRIVER: I would appreciate it because I spend most of my time fighting this but, regardless of what they've done, I have 104 bridges this year to paint in Maryland. I'm working 70 hours a week but the stress level, now I know why people go in the Post Office and blow everybody up! Thank you very much.

VICTOR TUCCI: Our final presenter is Robert Green.

ROBERT GREEN: Good morning. I should be ashamed of myself, my problems are nowhere near what those are. I'm not ashamed of myself but I perhaps should be. I don't know, if you're not aroused and outraged, then I suggest you check your pulse because

you might be dead. I'm Bob Green and let me preface my remarks by the following disclaimer. These remarks that I'm about to make on my own, so I don't blame anybody else for them. I'm proud to tell you that I am an elected member of the Maryland Delegation to the White House Conference of 1995. I say elected because there are different ways you can get on that thing. You can be elected or you can be appointed. I was elected, I was elected by my peers in an electoral process that was Statewide and I'm quite proud of that. It also says I don't have any political juice. I wish I did.

I have three quick points I'd like to make. The first point I would like to make is a simple request. While I think that President Clinton through an executive order or some other mechanism should direct the 50-State delegations to the White House Conference on Small Business to the task of helping America's cities with economic development and job creation, I know they do indirectly and directly by just operating a business. But I believe that this delegation is a unique body of experience and knowledge that exists in no other place and ought to be put to work at those kinds of issues. And I say that especially within the cities designated as empowerment zone cities. I would certainly love to lead such a contingent of people and entrepreneurs here in Baltimore. Perhaps even especially in the effort to bring the 2012 Olympics to the Baltimore/D.C. area, that could be something that Baltimore and D.C. delegates could team up on that and assure ample small business representation in that process.

My second point has to do with a simple recommendation having to do with the evolution of affirmative action. Not necessarily the amending of it but the evolution of it. About 15 years ago, I, as an individual led a group of investors raising \$50,000 of equity capital. I'm a family principal in a company called Network

Recruiters, Inc.. I'm the Chairman and the CEO of that corporation and we now own four personnel service franchises in the Baltimore area.

Our company, Network Recruiters, is comprised of women, African-American, Whites, and the physically handicapped and challenged. We are truly what I call diversity-owned. To reiterate, I believe we should evolve affirmative action, set aside programs and policies to encourage a diversity of ownership of a small business enterprise through our individual acts of free choice and association as is so characteristic of our democratic and pluralistic society. The aims of affirmative action and related programs have been taken to their logical and their intended conclusion and that is that women, African-Americans and the physically challenged, can achieve a mainstream and equity business position.

Point number three. As I mentioned, I was at the conference in 1995. I still have my button but I didn't think to put it on. I could be exploiting that button too, proudly, I might add. Having been there, we whittled down about 450 recommendations down to 60 recommendations. The recommendation that I'm talking about is No. 130, it has to deal with House HR-1717. This is under the Main Street category. The rights of franchisees, dealers and product distributors remains to be a critical issue and deserves immediate attention at the very highest levels of our government. Now, I haven't kept up with this, this thing could have been enacted for all I know, but I don't think it has. It has to do at this time, in my opinion, franchisees and other folks I just mentioned are a little more than sharecroppers and indentured servants.

I further believe that many franchise agreements are unconstitutional. While we were at this 1995 conference, President Clinton and Vice President Gore visited us two times.

That's got to be higher than usual on a five-day period to have both people come and talk to us twice. One of the things that the President and the Vice President talked about was the need to protect and defend the small business of the franchisee from the big business of the franchisor. I would ask that we please revisit this issue. I'm grateful to you folks for coming out here and giving us this chance to talk and to air our views and to share our thoughts and I thank you for your time and attention.

GAIL McDONALD: Thank you.

VICTOR TUCCI: Actually, this process came out of the White House Conference on Small Business. It was one of the issues that we brought forward and thanks to the Office of Advocacy and Jerry Glover, it got brought forward and it passed unanimously in the Senate and can you imagine anything passing unanimously in either one of the houses anymore! But this passed unanimously.

Joe, would you like to address an update on that?

JOSEPH SOBOTA: Maybe we'll just get together here afterwards. What I'll do is I'll make sure that the appropriate person who knows about franchising issues and so on will get together. I'd like to talk to you anyhow because I love your idea about the White House Conference delegates from Maryland and the District both getting together on perhaps new projects and I've been working over the last two years with D.C. delegates on other issues. So I think I could help you get that going. So let's talk a little bit when we get down here.

I might say since we kind of segued into this that one of the responsibilities, as you know, of course, Gail, of the Office of Advocacy is to try to implement and follow through on the recommendations of the White House Conference and with five years behind us now, we'd like to point out that 86 percent of the

recommendations that you folks put together have had action on them of some kind or another. Unfortunately, some of the ones that didn't have action on them still need work and we're still working on them. But we did have a lot of luck with that agenda and of the three conferences, it was the best.

GAIL McDONALD: Absolutely. This is a good forum for bringing them. We thank you for coming.

VICTOR TUCCI: Thank you for bringing that to us. Is there anyone else who would like to provide testimony or any trade associations? You will be limited to two minutes. Yes, sir. Please come on down. As Monty Hall would say, come on down!

GAIL McDONALD: We do a transcript of these meetings and then when the court reporter gets it back to us, we put it on the web so you can access the hearing and when I visit often with pals and Senate members, they tell me that their staff looks at the hearings because they want basically, you know, the uncensored version of what went on. So we do do this with all these hearings.

GENTRY BARNES: My name is Gentry Barnes and I'm one of the principals of a small software and engineering services firm named Solutions Development Corporation. We are a relatively new entity, we were founded in 1997 and we were elected into the SBA program in 1999, in September of last year. So far, we don't have any SBA contracts, but first, I'll do a couple of rebuttals.

I think this SBA program is a good program although we don't have any work through this program, the 8-A program yet. I think it's more an illustration about our marketing ability than a limitation of the program and how it works.

The fact that they have three-year terms, nine-year terms of

eligibility and also size limits, help to preclude the issue that was brought up earlier where the same companies will term after term continue to win the same contracts. So at least that's my belief and my hope for the program.

The second issue is more related to affirmative action. I'm a relatively young person and I wasn't there during a lot of the earlier struggles but I still see a lot of struggles ahead of us. I don't think the program needs to be adjusted or modified. My experiences through college, through business and whatever, although there are more doors that are open, there's still a lot of hindrances to getting through those doors, as a matter of fact. Because of my personal desires and the lifestyle that I lead and the environment I tend to live in, I'm actually excluded from a lot of opportunities because I'm not there to socialize with the people who make the decisions to allow those people to come through and to benefit from those situations.

So while we have made a lot of progress and I am definitely a beneficiary of some of the progress that was made by my elders and my seniors, I still think we have a long way to go. So I would not recommend anyone try to change that program just of yet.

The real issue I wanted to talk about today was, one, we're an engineering services firm and we've had a really strong and talented core group of individuals that work with us. And we've been invited to participate in several bid opportunities as an opportunity for our clients to meet their certified bills for those contracts. We've been able to demonstrate and provide personnel who obviously met their criteria of being included in that work and to prime one of those contracts. But after that takes place, no one ever looks at whether or not those clients stick to those goals or not. Or whether they try to go in and provide opportunities for the smaller companies to actually

succeed in these endeavors.

I talked to several business advocates at different bases throughout the area. Primarily we service DOD and other Federal agencies and because of staffing reductions or whatever the case may be, there hasn't been anyone who has looked at the success and held companies accountable for their performance on these issues. It's a big part of the actual proposal process. So you've got to demonstrate in your proposal and your staffing plan that, yes, indeed, we're going to try to do this, but once it actually gets awarded, business ethics take over. It's like no one cares if I take all the work for myself, then I'm going to take all the work for myself. So what they can do the job but no one cares whether we award these opportunities or not. So there is a real disconnect there. I think it's good to have incentives and it's good to have goals but if no one cares about whether those goals are achieved after the work is actually awarded, no one is going to follow through.

VICTOR TUCCI: Thank you for your comments.

PAUL WILLIAMS: Thank you, good morning to everybody. My name is Paul Williams. I was one of the Washington, D.C. delegates to the White House '95 Delegation and consider myself still a delegate. The issue that I brought from the Washington area is Issue 121 of the 60 that was presented. Number 121, which relates to international trade.

I'm currently in charge of training and counseling at Howard University's Small Business Development Center. What I want to get in the record today is my interests and the interests of many who I talk to relative to the type of support and training that must be presented to get the small business community involved in international trade. The law was just passed for the African opportunity, the Growth and Opportunity Act was just passed. What

I'm pushing to is to try to get a fast track global or national effort underway to advise the small businesses and aid them in getting into the international trade. There will be no reversal in international trade, it will only get bigger. There are areas that have not been touched or mentioned as we talk about international trade, such as tourism, an industry that has never had a downturn. It's like water in a balloon, if something goes one place that causes it to diminish, it will rise in another place. And there are other areas.

But primarily we need to find a way to get the message and the assistance to the small businesses. How to get into the international trade arena? I will just tell you one of mine that I pushed that should not happen. We don't need to go on trade missions, it's just not valuable unless you're touring because if you've got the business, how would you manage it when you have no idea how to operate outside of your own arena anyway. These are types of things that probably are not too popular to say but they must be said and we have to give examples of how to remedy. You don't take candy away from a baby, you give the baby something else and they drop the candy. So we have to bring some ideas of how to get into that arena.

I'm just getting my voice here on the record. We will all get to say again on the next round and we're going to be coming with ideas and attitudes about this international trade. Thank you very much for this opportunity.

VICTOR TUCCI: We would appreciate if both of you would submit comments in writing and also if you would participate next year at the hearings in Washington, D.C.

Is there anyone else who would like their two minutes of fame and glory before we go on to our next speaker?

Without any further ado then, we have a report by Blane Workie, Regulatory Attorney, General Counsel for the U.S. Department of Transportation.

BLANE WORKIE: Good morning. Thank you for the opportunity to be here today. My name is Blane Workie and I'm a regulatory attorney in the General Counsel's Office of the Department of Transportation. The Department has long taken its responsibility to small entities seriously and it's been very informative being here today and hearing from all of you. We engage in extensive outreach efforts when issuing rule-makings, including changes in interpretations or enforcement policies as well as regulations.

Today I will be addressing the ten recommendations contained in the National Ombudsman's 2000 Report to Congress and, if time allows, possibly the three major enforcement and compliance issues that have arisen from the small business feedback received by the Office of the National Ombudsman.

Why don't we get started. I guess the first recommendation of the National Ombudsman suggests that agencies test new or significantly modified enforcement and compliance policies that may affect small businesses from cooperative pilot projects. This is the sort of thing that the Department has taken to heart and has done. One example of a cooperative pilot project is RASPA which is Research and Special Programs Administration's Pilot Project Implements. It's hazardous materials transportation safety ticketing program. Basically what this means is that this ticketing program applies to violations that do not have a direct or a substantial effect on safety. Under this program, RASPA, again, the Research and Special Programs Administration would reduce by 50 percent the penalty amount that's currently in the guideline through this pilot program. After a two-year pilot, RASPA made this successful program permanent.

There are other programs, the Coast Guard, for example, also has a ticketing pilot program dealing with pollution ticketing. Basically, this program reduces penalties for first and second-time minor violations of environmental issues.

I could go on but just to proceed to the other recommendations, the second recommendation of the Ombudsman suggests that agencies provide compliance guidance to small businesses and also that we don't dictate the means by which small businesses achieve compliance.

The Department of Transportation provides a large amount of guidance to small entities. We do this through websites, pamphlets, 800 numbers, briefings, public meetings. We've had a training seminar dealing with small entities. Last year, I believe, there was as well as guidebooks. The guidance does not dictate compliance. Guidance by its term itself is supposed to explain rules or statutes or provide helpful information. It is not binding information.

The Department has also done various other things. One of the items that the Department has made an effort to do is instead of having regulations that are designed specific, the Department through all of its agencies has been trying to make its regulations more performance standards. In essence, providing flexibility to small entities and other entities, for that matter.

One example, for example, is the F.A.A. They evaluate their regulations under development to determine whether a performance standard is appropriate every time and then if it is appropriate, then a performance standard is used in place of a design standard. F.R.A. does the same thing as well.

The Recommendation #3 from the Ombudsman suggests that agencies give small businesses notice of violations and reasonable

opportunities to come into compliance without being penalized. I heard from various entities today who kind of either mentioned that issue specifically or eluded to it and I want to make a point of saying that typically the Department provides small entities with a reasonable time frame in which to make improvements without the threat of a civil penalty.

The emphasis of the Department of Transportation is compliance with regulations, not on collecting civil penalties. Our enforcement personnel inspectors work closely with small businesses to educate them on how to comply and to ensure safe practices. For instance, everything is an acronym of the government, FMCSA, which stands for Federal Motor Carriers Safety Administration, and the States conduct about 10,000 compliance reviews each year. These compliance reviews are conducted on the highest risk motor carriers. Violations that are subject to civil penalties are typically discovered doing these types of compliance reviews. But nearly two-thirds of these are resolved administratively without penalties being assessed.

Each year the Federal Motor Carriers Safety Administration as well as other agencies within the Department expend a significant amount of its resources on education and outreach efforts to promote voluntary compliance.

Other agencies also emphasize compliance with regulations. For example, MARAD, which is the Maritime Administration, issues fines or penalties only under its Section 9 which is the Vestal Foreign Transfer Program, and then only under the most extreme circumstances and only after negotiation and all other means to resolve the issues have been exhausted. RASPA which, again, is the Research and Special Programs Administration, uses letters of warning without penalties in both of its regulatory programs. For example, the Pipeline Safety Program utilizes a risk management

program that relies on voluntary compliance by the industry and de-emphasizes penalties.

However, I do want to make a point of saying that if an operator, whether small or large, willfully violates the safety regulations or will not cooperate, then the Office of Pipeline Safety, as will other agencies within the Department, will use their enforcement authority to ensure that corrective action is taken to protect the public.

I'll mention one more before I go on to the next recommendation. The FAA has recently expanded its voluntary disclosure program. Under this program, where a violation was not intentional and not serious and the violator takes corrective action, the Federal Aviation Administration will only take administrative enforcement action. They will issue either a warning notice or a letter of correction instead of a money civil penalty.

I could go on but we'll go ahead and go on to the fourth recommendation. The fourth recommendation suggests that when Federal agencies delegate enforcement authority to the States, they should ensure the minimum Federal standards are followed, including SBREFA. The Department generally does not delegate enforcement authority to the States. However, on occasion certain agencies do initiate enforcement action based on State inspections. For instance, the Federal Motor Carriers Safety Administration initiates enforcement action based on investigation performed by State officials. For that reason, the Federal Motor Carriers Safety Administration requires any State or local enforcement official to pass a two-week Federal compliance course as well as a number of days of on-the-job training with an experienced investigator before conducting compliance reviews. I know that has been addressed today about some of the concerns of small entities are the people who come to review them might not

have the necessary training. At the Department of Transportation we try to ensure that the people who are doing compliance reviews do have the appropriate training and are experienced.

The fifth recommendation suggests that agencies make full use of Federal law that prohibits giving false information to the government or using the government as a tool to unjustly retaliate against employers. I know it wasn't mentioned today, but there is some concern about disgruntled employees and possibly providing false information to the government. But the Department has not really been aware of that being a problem although I should note that there are some departmental forms that do specifically warn people, voluntary information about Federal laws concerning false statements.

For example, the Federal Motor Carriers Safety Administration, actually as well as other agencies, on their forms, including the drug and testing alcohol, drug and alcohol testing forms put that sort of notice to the person providing information that there are Federal laws against false statements as well as the penalties under Federal law for not giving truthful information.

I need to point out though although the Department does not want to receive false information from employees and will take action against individuals providing false information, we don't want to discourage employees from providing information, whether that's current employees of any entity or former employees. One reason for this is that employees have a lot of knowledge about the business, a lot more than anyone else. And it has been the Department's practice not to assume that any complaints are true just because a complaint is made, but to independently investigate each complaint to determine whether there is non-compliance. The Department prefers to investigate complaints rather than take action to discourage employees from coming forward and providing

information to the Department.

The sixth recommendation from the Ombudsman suggests that agencies carefully evaluate in partnership with effective industries the development and use of voluntary standards before considering or implementing new mandatory regulations. The Department has adopted voluntary standards in lieu of developing its own regulations where appropriate. For example, the United States Coast Guard has done this with respect to determining vessel tonnage. The Federal Motor Carriers has also worked for the last few years with its Canadian counterparts on developing an international standard for load securement that has involved the affected industry.

The Department also uses industry standards not simply for industry to voluntarily comply with it, but there are times industry standards are used as a basis for regulations. For example, the Research and Special Programs Administration uses industry consensus standards in both of its regulatory programs to the maximum extent possible. There are instances where it has to be regulations, for example, there are statutory mandates that tell the Department or have language such as "a department shall prescribe regulations for hazardous material." In which case voluntary standards are not possible and we would need to come up with regulations, mandatory regulations.

The seventh recommendation suggests that Federal agencies utilize internal offices that work with small businesses about their rights to regulatory fairness. The Department, I think it was requested by the Small Business Administration's National Ombudsman, they provide small entities with information on how they can comment on enforcement activity conducted by agency personnel by informing them of three things.

First, small entities are informed that Ombudsmen as well as the

ten Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions.

Secondly, small entities are informed that the Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses.

And, thirdly, when the Department informs small entities that if they wish to comment on the enforcement action, in this case, it will be the Department of Transportation or one of the agencies within the Department of Transportation, that they can call, I think, it's 1-88-REGFAIR and I think it translates to 188-734-3247.

DOT estimates this sort of information in a number of ways. For example, the Coast Guard puts this language on their Internet sites and instructs the people who take calls from a boating safety hotline to pass along this information to callers who have any question about enforcement of boardings. The Coast Guard also puts this information in publications. The Federal Railroad Administration includes this language in a booklet for small entities that is distributed during inspections.

The Department also provides information, I think I've said it earlier, but through guidance materials, enforcement policies, websites, newsletters, 800 numbers and so on. The goal of the Department is to reach a far larger group of small entities in transportation industry than those who we issue enforcement letters for. We want small entities to be aware of their rights and we try to have various outreach programs to do that.

The eighth recommendation from the Ombudsman suggests that agencies conduct objective reviews of their implementation of SBREFA. DOT does do this. Regulatory officials from throughout the Department of Transportation meet on a regular basis to

discuss a variety of issues, many of which involve SBREFA. We may discuss problems, complaints, recent court decisions. Actually, Neil Eisner from my office, I believe started this, and it's called Rolos Meeting and we have another one coming up shortly. Basically, all the different regulatory offices within the Department, officials will come from each of the agencies, we would meet sometimes it's twice a month, you know, sometimes it's once a month, depending on the issues that are present and we would discuss on how we can solve some problems.

Recommendation 9 from the Ombudsman suggests that agencies review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. The Department regularly reviews its paperwork requirements and its paperwork submission to the Office of Management and Budget. We're always examining ways to try to reduce some of these paperwork requirements. We also have a regular scheduled program for reviewing all of our regulations which is published as part of our semi-annual regulatory agenda. An example is the Federal Motor Carriers Regulatory Flexibility Act, Section 610 Review, the Hours of Service Rule, which was published on May 2, 2000. The agency identified a major duplication of requested information with the Department of Labor's Wage and Hour Division as well as a potential to reduce other requested information. The net result, if the hours of service proposed rule-making is adopted in a final rule, could be a saving of 37 million burden hours.

Finally, the tenth recommendation of the Ombudsman suggests that agencies provide well-trained staff for inspections or compliance audits. The Department does do this. The Department is committed to ensuring that its regulatory and enforcement staff understand how DOT programs and requirements affect small businesses. The Federal Motor Carriers requires all Federal safety specialists to successfully complete a six-week class, which I mentioned earlier,

before they are permitted to perform compliance reviews. Inspectors from other modes of transportation, F.R.A, F.A.A., RASPA and others also have to undergo extensive in-depth training in their respective areas.

Again, there are other examples but I don't want to take up more of people's time, but if you have any questions, I'll be more than happy to answer any of them.

GAIL McDONALD: In the case of a pipeline safety spill like we've had in this area recently on Petussin River, how long does it take to come out on that?

BLANE WORKIE: There's an investigation done afterwards. I'm not sure of the exact time frame of the report. I mean I can find out for you.

GAIL McDONALD: Well, I'd like to know, we did get some calls on it when it happened, from some of the non-profits that work on the river.

BLANE WORKIE: I can find out and get back to you on it, probably as early as next week.

GAIL McDONALD: Thank you.

BLANE WORKIE: Any other questions? Thank you.

VICTOR TUCCI: Thank you. Our next presenter will be Barbara Jacobs from the U.S. Securities and Exchange Commission. We have copies of her report that I will set here for anyone who would like a copy. Thank you.

BARBARA JACOBS: Good morning. My name is Barbara Jacobs, I am the Deputy Chief for the Office of Small Business at the U.S.

Securities and Exchange Commission in Washington, D.C. The Division of Corporation Finance through the Office of Small Business is at the forefront of the Commission's efforts to promote small business capital formation. I am very pleased to have the opportunity to explain some of the issues that we've been dealing with and some of our responses to it.

Before I do address the SEC's efforts in the area of small business capital formation, I must give a standard disclaimer which is that any statements that I make today are my own and don't necessarily reflect the views of the Commission or its staff. I wonder if the Chairman has to give that, but that's another story.

The Commission understands the importance of small businesses to the U.S. economy and is committed to addressing the special concerns of small businesses. In fact, the Chairman, Chairman Levitt, was one of the key leaders of the first White House Conference. He was a small business owner in the Midwest and then he moved to the east and developed his business and eventually, through many roads, he became Chairman of the SEC.

What does the SEC do? Well, we regulate your capital securities markets in the United States. They are the crown jewel of our U.S. economy. We regulate information that comes to public investors, we make sure that investors have "full and fair disclosure" so that they can make investment decisions or voting decisions. We regulate not only your public companies, we regulate your broker/dealers, your investment companies, your investment advisors.

The Division of Corporation Finance, which I'm a part of, is actually focused on the disclosure side. We regulate the disclosure that you see whenever you have the offering sale of securities. If a company, including small business companies,

want to go out and offer and sell securities and go through a registered public offering process, they would file what's called a registration statement with the SEC, which we would review, which we would work with the company on.

Another way you can get into our reporting system outside of availing yourself, of raising money through the sale of your securities on a public basis, is if you are a private company or you've reached a certain size, so we say you know what? You're big enough that really your shareholders need the information, they need to have the public information which is required under our rules. The size standard right now is 500 shareholders and \$10 million in assets. A few years ago it was doubled from \$5 million to \$10 million. So if you have those two components, we're going to say that you're big enough and that you should become a reporting company.

I first want to address some of the SEC outreach programs that we have been hosting. First, in the Division of Corporation Finance, we created a special small business unit. It was created back in 1979. In 1996, the size was tripled. We are now the largest operating unit in the Division of Corporation Finance. We have in the whole Division of Corporation Finance, we have about 330 attorneys, accountants, analysts, computer people, administrative folks as well. The Office of Small Business is the largest, we have about 28 people who are just there to help small businesses.

How do we help small businesses? Well, as I mentioned earlier, we review your public offering documents, we review your registration statements that you come in when you want to raise money through the offer and sale of your securities. Or if you, again, have grown to a certain size and you have to file another document with us because you've reached the \$10 million in assets and the 500 shareholders, we review that as well because that is your first

entry into the public reporting system. So we find that that's critical and we will take a look at you.

Besides the review work, the Office of Small Business also does all rule-making for the Division of Corporation Finance relating to small businesses and I'll talk about that in a few minutes, some of the new rules that we've adopted or rules that we have changed in response to perceived needs. We also do interpretive work. We have about seven attorneys who on a rotating basis act the attorney for the day. If you have a question on what it takes to raise money under the Federal Securities laws, you can call our number, which is the 202-942-2950 number, and you can say hey, Barbara, can you explain to me what it takes to file a Regulation A document? Just for an example, I want to raise \$5 million in securities, I want to issue \$5 million worth of securities, I want to know how the process works, what I can expect from the review side, what it will take from the State side and any one of the seven attorneys will be able to help you. Last year, in fiscal year 1999, we received 12,600 calls. That just shows you how important small businesses are to the economy, if we're getting 12,600 calls being answered by seven attorneys. That's 40 to 50 phone calls a day that we reach out.

You can also e-mail us, we respond to e-mail. We respond to faxes. We will meet with you individually. We also issue letters, just our small office, I shouldn't say so small because we are the largest operating unit, but just our office issued 86 interpretive letters to people who were interested in our advice. So that's our special headquarters unit and we're very proud of that.

Another special outreach source that we have, and you may or may not be aware of this, is the Commission has a wonderful website that's called www.sec.gov and there's lots of things on it. In

fact, I understand it's one of the most popular Federal government websites. On that website you can get anything from Commission rule-making releases to testimony to press releases to news digests to a special section just for small businesses. There's a special icon for small businesses. If you click on it, you will have a choice of several menu items. You can get information not only on our rulemaking, but you can get information about the work we do, we have a link to the Small Business Administration. One of the most exciting things that we have done is it just came about in the last, I would say, nine to twelve months. On the small business section of our website we have put up all of our rules, forms and regulations and it's for everybody, it's for all public companies, large and small, all private companies who are interested in issuing stock. So if you're interested in filing a registration statement with the SEC for a small business issue or you might be interested in doing a SB-2 registration statement, for example, you will find this SB-2 registration statement plus all of the rules and regs relating back to it on our website. It's estimated that we get 800,000 downloads a day from our website. It's just not small business obviously, but we do have another portion of our website which, I'm sure if you're investing in the securities markets, you may have very well checked. That's our EDGAR Website. And that stands for Electronic, Data, Gathering, Analysis and Retrieval System. That was my baby back in the 1990's and in the late 1980's I did all the rulemaking associated with EDGAR.

EDGAR is our computer system which public companies have to file their documents electronically with the SEC and that we then post all your filings up on our website with a 24-hour delay basis and you can access. If you're interested in knowing what you as a shareholder of a public company is doing, you can go up to our website and get the most recent QR which is the Quarterly Report.

Or maybe you're interested in getting the Annual Report or maybe you're interested in knowing what your competitor is doing. Maybe you're a private company but you're interested in knowing what some of your public companies are doing and you can get full financial information as well.

In fact, I was on an airplane last week, a United Airlines flight, and in their June, I think it's Hemisphere Magazine for United Airlines, there was an article in there. I was flipping through it, you know, trying to cut for a speech but still flipping through the magazine article and they were talking about ten events that really brought Wall Street to Main Street in the 1990's. They were saying Motley Fool and the Evolution of CNN. One of those things was EDGAR and the fact that EDGAR now puts all shareholders on the same footing. It doesn't matter if you're on Wall Street, it doesn't matter if you're in Peoria, you're on the same footing. I thought that was pretty exciting.

Another outreach program that the Commission has been doing, since 1996 with which I've been involved, for the last three years, is that we do a series of SEC small business town hall meetings across the United States. We've done 15 so far. In calendar year 1999, we did ones in Seattle, Kansas City, Albuquerque and Anchorage, Alaska. I know you're going to be going to Anchorage a lot pretty soon! As part of this, what I do is I put together a two-hour panel discussion in which I put a SEC speaker who talks about what it takes to raise money under the Federal Securities law. I will walk you through an example. Maybe it's going to be Barb's BBQ if I'm in Albuquerque or Barb's Brewery, that was an exciting example in Anchorage. We've got a lot of microbreweries. What it takes to raise money and what options you might want to consider at the various levels.

After the SEC speaks, the State Securities regulators will address

the audience for about five or ten minutes because whenever you start talking about issuing securities, you have to think about it not only on the Federal level but on the State level. So the State regulators will talk a few minutes about it, what it takes. Then the Small Business Administration speaks. They'll talk about all the wonderful programs that they do, their credit program, their senior executive program. If there's an AceNet operator in the State, then I will have the AceNet operator speak. AceNet is a SBA-sponsored program that links up small companies with angel investors. So if you're a woman entrepreneur and you're interested in raising money, for example, and you need the contacts for the angel investors, you can think about, one of the programs you might want to think about is the AceNet program. I mean we'll get the information out to you. And then I normally link it up also with a local attorney who will talk about some of the rules and regulations, some of the pitfalls, a local venture capitalist might speak. The program is free, it's two hours, I would love to have one in the D.C. metropolitan area. I often link it up with the small business development centers and if there's any other area, I have active discussions right now for North Dakota, Pittsburgh and I'm blanking on the third location right now. So we have a special headquarters unit, the website, the SEC small business town halls and we have a small business ombudsman who answers your questions in our Office of Small Business. We've had that for quite a long time actually now.

And then, finally, we have the SEC annual government business forum and that's what I brought over here. That's the final report. That's actually required by Congress. We've been having them since, I believe, 1982. We just finished up our 18th one in Washington, D.C. last year. We're working on our 19th one which will be in San Antonio, Texas in September. That is the only Federal governmental sponsored forum that links up regulators with

small business owners. It's a day and a half event. We put on panel discussions basically in the morning and then we break you out into small interactive groups in the afternoon and you develop recommendations. These recommendations then get put in a ballot, I mail it out to the participants. The participants can go anywhere from about 150 to 200 people. You vote on them, if I get a majority of votes cast for a particular item, those will be the final recommendation. If you get a chance, the recommendations from the last year form are set forth in that orange pamphlet over there. We then ship copies of the final report to not only Congress, and the White House Conference recommendations always come up, at least in the credit section. We normally break out according to tax, credit and securities are the three areas of focus for the government business forum. But we send it to Congress, we send it to the affected agencies, including the IRS. We had Commissioner Rossotti speak at one of our luncheons last year. He was fabulous, he really listened to the small business owners. We send it to the Department of Labor, we send it to the SBA obviously. We work hand in hand with the SBA in order to get this form done. Jerry Glover is always one of our favorite speakers because he gives a speech called The State of the Union for Small Businesses and he laces it with statistics and he can communicate with an audience like nobody else. Thank you.

I want to talk briefly about the SEC's response to SBREFA. We have issued compliance guides in January 1997 or guides that we have designated compliance guides. I have brought an example of the compliance guide with me. It's the questions and answers for small businesses. It is up on our website but I brought you hard copies, it is one of our most popular pamphlets. If you get a chance, if you're interested at all on the subject, I would greatly suggest that you take an opportunity to see these. It's all done in plain English, it's one of our first efforts to do

anything in plain English.

In terms of rule-making, we have had a series of rule changes since early 1992 to small businesses including we adopted a new regulation, SB system, which is a set of rules specifically designed for small businesses. It's very akin to like big issuers, but it's available to any company who has less than \$25 million in public float and \$25 million in revenue. The financial statements disclosure requirements are trimmed down from a three-year and a two-year income and a balance sheet to two years and one year. It's written in plain English. There's less extensive disclosure required for the small business issuer compared to a regular SK issuer. We docket changes to Regulation A, which I talked about earlier. Regulation A is an offering exemption which permits you to offer and sell up to \$5 million worth of securities in a year if you are a non-reporting company. We have increased the threshold from \$1.5 million to \$5 million. We also permit you to test the waters, so to speak, without Federal intervention. What that means is that you can go out with a short document to see if there's any interest in your company. I have seen Regulation A offerings for restaurants, banks, companies interested in putting video cameras in day care centers, health clubs, you name it, we see it. We received about 87 of these filed last year.

Recent SEC rule makings have focused on the employee benefit plan area for non-reporting companies. We have increased the threshold amount that you can raise. That is a very significant area actually. We used to have a cap of \$5 million, now we say you can raise an unlimited amount of securities but if you get up to 500, we really think there is a certain amount of disclosure you need to be providing to investors such as financial statements, that's your employee investors. Financial statements, risk factors disclosure.

As I mentioned, we also increased the asset size from \$5 million to \$10 million which would require you to come into the Commission's reporting system under the 34 Act. That's the 500 shareholder, \$10 million asset guide that I talked about earlier.

We reduced the holding period for restricted securities. A lot of small business owners have restricted securities. If you've gotten them in private placements, we've reduced it from three years and two years to two years and one year. So two years you can sell an unlimited amount.

And then, finally, we have had a series of re-invention initiatives, particularly in the past six months. We've been very active in the area of electronic media and how we're all communicating now, particularly over the Internet. The Internet has spawned all sorts of issues for the SEC. Think about it, online offerings. We are now able to vote online. These are all issues that are very key but it affects the large businesses as well as the small businesses.

We just issued a release last month on electronic media. If you have any interest, again, it's up on the Commission's website. We issued various new rules to simplify and harmonize disclosure in the area of takeovers and mergers. A lot of small businesses, once they get out of the growth cycle, you know, they go up to an IPO, it's one exit strategy. Another strategy is an acquisition or a merger with another company. Again, that's available to all companies regardless of size.

And, finally, we recently issued a so-called householding rule which permits companies, large and small, to deliver disclosure documents, one disclosure document if you've got two or more investors in one house. So, say, for example, you get proxy statements, actually, these are for prospectuses. To the extent you get prospectuses in the mail, you might have a minor child and

you, as the investor in the company, this new householding rule will save companies, large and small, a lot of money because now they can send one copy of this prospectus so long as you give them consent, we have proposed rules out there which will extend this to proxies. So no longer will you have to have multiple copies of proxies sent to you if you don't want them.

So I appreciate your time. May I ask if there are any questions? I brought some material, I brought the final report from the government business form, I brought the questions and answers. I'll put out my business card, feel free to give me a call. I'd be very interested in setting up small business town hall meetings in any of the locations that were mentioned earlier. And thank you.

GAIL McDONALD: Thank you.

VICTOR TUCCI: Thank you. Finally, we have been asked by a representative from the EPA to have some time and we are going to allow this person five minutes. Carolyn Dick from the EPA.

CAROLYN DICK: Five minutes, I guess I have to talk fast. The EPA asked me to talk on two subjects. One is EPA's nitrates initiative and the second was some of the activities we're doing relating to small businesses. The Nitrates Initiative, nitrates are sort of hitting everybody's radar screen at the same time. The National Academy of Sciences came out with a study a couple of months ago talking about that virtually all of our nation's estuaries were being affected by nitrate compounds because the majority of nitrates from processes are discharged either directly to surface waters or even if they go to publicly operated treatment works, there isn't a treatment done for nitrates. So why do we care, what's the problem with nitrates?

Well, nitrates, particularly with children and infants, when

ingested, and it's being dumped to surface waters, prevents oxygen from traveling through your bloodstream the way it should and, in fact, messes up your system for obvious reasons leading to what is called the Blue Baby Syndrome, basically, they're not getting enough oxygen. It affects adults as well. Essentially it depresses all your vital systems, cardiovascular, respiratory and nervous. So you can imagine all the symptoms that come from that.

So everybody, public interest groups, the National Academy of Sciences and, of course, EPA was concerned about these discharges to the surface waters. To address that, EPA came out with an initiative which is something that we've favored lately in order to reach the regulated community. Typically, the way they work is we start with compliance assistance. We mail, we go to trade associations, we put things on our website, we develop guidances, any way we can think to communicate with the regulated community and say here is what the law is and here is what you have to do to comply with the law. And then we set a time period to comply with the law and in that time period, we encourage the regulated community to make use of our audit policies. We have two of them. One is anybody can take advantage of. The second is geared specifically towards small businesses. And what they provide for is if you conduct an audit of your own facility, you detect the violations, you bring it to the attention of the agency, then penalties can either be waived entirely or reduced. These caps, these programs, are tailored even more specifically in that we will send out to the regulated community, like in the case of the nitrates issue, we sent them out to companies we knew were releasing nitrate compounds and we said here's the problem, here's what the law is, here's what you do to comply with it and if you come to us by such and such a date, no penalty on the condition that you provide us your nitrates reporting. This is all under the Toxic Release Inventory Violations, that requires companies to

report their releases so the community knows what's being emitted into the environment. The idea is to shift the decision-making about what to do about these environmental issues to the community that's being subjected to the releases.

So under that initiative we had 130 companies come in, they said here's what our deal is. We've got these releases and they were able to take advantage of that initiative. Subsequent to that or in the middle of that, we were hearing from other sectors of the regulated community that they didn't really understand the law, they weren't, sure about what this initiative was about. In response to the concerns we were hearing from regulated industry, we met with industry. And in response to our meetings with them and hearing their concerns, we adjusted the terms of the initiative so that we put out an extended deadline and for small businesses, we offered a cap of \$1,000 for any and all violations at any and all facilities. So if you have 100 violations at five facilities, your penalty can be capped at \$1,000 conditioned on your coming in by the date we've set, having performed audits at your facilities to detect violations and agreeing to submit both your nitrate reports by a certain date and then all your chemical reports that are required by the Toxic Release Inventory by a later date.

For larger companies, because EPA's small business policy, which was specifically endorsed by Congress, since we had it, we had an audit policy geared towards small businesses prior to Congress saying agencies make small business audit policies. So our cap for our small business policy is 100 employees, period. Not a monetary cap, not a fluctuating employee number.

Our audit policy, anybody can avail themselves of. So in this initiative, if you were a small business defined as 100 employees or less, your penalty could be capped at \$1,000. If you were

larger than 100 employees, your penalty would be capped at \$5,000.

So I think the initiative is a good example of a way to reach the regulated community, which is a major concern, particularly with small businesses, hearing industry concerns and responding to that with some real hard money numbers and in a relatively short turnaround time. I guess that dovetails nicely into what we're doing in relation to small businesses generally.

I'm not going to go over all the recommendations. I recommend that you take a look at the report to Congress that SBA put out, which is on their website, and I wanted to thank SBA for recognizing a lot of EPA's efforts in relation to small businesses. For example, we were singled out for their RegFair Innovation Award for an initiative we did regarding dry cleaners. This is the same kind of issue. These environmental laws apply to dry cleaners, we develop guidances to inform the regulated community of what the law is, we meet with them and we set enforcement deadlines further down the road hoping to get the regulated community educated, informed and in voluntary compliance with the law. That's a win/win situation for everybody.

We're doing a lot of things that SBA hasn't recommended specifically. Probably one of the biggest things is we're revisiting our 1984 small business initiative strategy for improved regulation and compliance. In 1984 we came out with a strategy resulting from conversations with small businesses, identifying small business issues. With the passage of SBREFA and other things, we thought it was a good idea to revisit it. We're starting off with in-house meetings at EPA about what we're hearing are the small business issues followed up with meetings with State regulators followed up with meetings with small businesses and with SBA, all with a mind to tailor the strategy to what the issues are today.

Basically what we're hearing from small businesses is that we're on the right track. They don't want a whole bunch of new initiatives, but want us to more clearly implement the initiatives that we have ongoing now.

We've also this past March had a compliance assistance form and, again, that was a multi-stakeholder meeting. That initiative is geared towards consolidating all our compliance assistance efforts, whether it's written pamphlets or websites or outreach, making it more accessible, more of a one-stop shop for anybody, whether it's regulators or the regulated, to access whatever kind of compliance assistance we have available in our offering.

And I'll speak to three specific recommendations that we are implementing and intend to finalize by the end of this fiscal year. One is a regulated fairness protocol. Essentially, I'm developing a checklist so that any EPA enforcer, when they find out that they're dealing with a small business, will have this checklist of items that they need to be aware of because they're dealing with a small business. For example, we'll have here's our small business policy, check that, you know. Here's this, here's that, so that the regulator, the inspector, whoever it is interfacing with a small business, is aware of all the things that the agency has that applies to small businesses.

We're also developing a protocol for expeditiously responding to small business concerns when the economic viability of that business is threatened. And that's pretty much as I said it. If somebody calls up and says look, this action was just taken and if something is not done faster than the normal process, my business is going to go under. And the agency is developing a protocol for how to handle that kind of concern.

And then the third thing is our SBREFA training module. Prior to SBA making the recommendation, we had been doing SBREFA training

and integrating it into our courses that weren't small business specific. For example, we had a hazardous waste inspectors course and we had a section on that on small business. What we committed to doing was reviewing the training module we had already developed to make sure there weren't any gaps, as well as surveying all the courses for EPA employees that EPA offers to slot this in wherever it was suitable. And we're going through some dry runs now. I presented the training module at our most recent advanced administrative trials course, working out some kinks, and that's another one we hope to have done by the end of fiscal year.

And the goal is just to raise the level of awareness within the agency of small business issues and how EPA employees should be interacting with small businesses. And not to be outdone in the show and tell department, I did bring our information sheet. This is one of the things we did to implement an earlier recommendation from SBA which is to inform small businesses of their right to comment on agency enforcement actions. In addition to that, we've put together what at the time was EPA's small business resources. We've listed websites, small business development centers, the RegFair Hotline, things like that. So I'll leave that here for anybody to pick up that wants them. And there's contact information on there as well. And I'm probably up on my five minutes.

GAIL McDONALD: Great.

VICTOR TUCCI: Thank you. Shawn, would you like to make some closing comments?

SHAWN MARCELL: Thanks, Victor. I just wanted to thank everybody who came and testified today. It was really great to hear those stories. I also wanted to thank the agencies who had comments, the DOT, the SEC and EPA. I just want to really commend your

agencies for being extremely pro-active with the needs of small businesses, especially in the regulatory environment. So thank you.

CAROLYN DICK: I just want to say one more thing about the hearing process because I think sometimes a small business might show up and they don't know really what happened. We had a great success story where a small business came and testified at a hearing. We try to send an EPA representative to every hearing, and the EPA representative met with that businesswoman. He took her back into consideration, brought her back to the office, that was within maybe two weeks, but it was certainly within the month, and clarified for her that she did not have a reporting requirement under the environmental laws. So, basically, she didn't have to do anything. Up until then, she had been submitting these reports and she didn't understand why she had to and all this kind of thing.

VICTOR TUCCI: That came out in the Pittsburgh meeting and I thank you.

CAROLYN DICK: I strongly encourage you to tell your fellow business people to attend the next hearing. It is really useful for us to have a method to interface with small businesses.

VICTOR TUCCI: I'd like to thank you, Shawn. Once again, we're able to work very well together. Shawn and I have been together on this since the inception and Shawn is the first Chair and Peter Barca is the first ombudsman, set a great foundation. I apologize for the Board members who were unable to make it. Ann Moss especially has attended all of the previous meetings and has been very dedicated to SBREFA and the foundation that has been set and now we have a new ombudsman, Gail. And Gail is taking us into the

future and taking us in the right direction and I am very encouraged that Gail has been appointed the Ombudsman.

GAIL McDONALD: Thank you. I would like to close and since this region is so close to all of us, I will say next year we will do it in Washington, D.C. and try to plan a good partnership with some of the small business trade groups that are in the area. NFIB is here today, thanks for coming. But, you know, I think in this region we do have a lot of knowledge and a lot of resources that are accessible to us. So I thank the agencies for coming today and doing their presentations. You know, outreach is just a continuous effort, but as a new Ombudsman, I am delighted with many of the materials that have been developed. They really are reaching out to the audiences that you regulate. Thank you so much from our testifiers today, we'll get back to you, you will be hearing from us.

As I say, on the health care issue, we do plan to do those further Roundtables and I'll be talking to you and we'll get together again on these issues. Thank you all for coming.